THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.25788 of 2006

Date: 25th October, 2007

Between :-

R. Nagendar Rao and others ..

Petitioners

And

The Government of A.P.,
Rep. by its Secretary (Civil Suplies),
Secretariat, Hyderabad
And others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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ORDER:-

Heard Mr.Venu representing Sri Kowthuru Vinay Kumar, the Counsel representing the writ petitioners and the learned A.G.P. for Civil Supplies.

2. This Court issued *rule nisi* on 13-12-2006.

3. The Writ Petition is filed for a Writ of Mandamus declaring the inaction of the 3rd respondent in implementing the order issued by the 2nd respondent in proceedings CCS. Ref.No.PDS II(3)/6493/04, dt.27-3-

2006 with regard to allotment of kerosene quota in respect of new cards (Irish cards) in favour of petitioners as illegal, arbitrary, without jurisdiction apart from being violative of principles of natural justice and pass such other suitable orders.

4. It is stated that all the petitioners are the Fair Price Shop Dealers of Nellore town. It is also stated that the 1st petitioner is the Fair Price Shop Dealer of Shop No.55 Mulapeta of Nellore town; the 2nd petitioner is the Fair Price Shop Dealer of shop No.42 of Mulapeta; 3rd petitioner is the Fair Price Shop Dealer of shop No.50 of Pedda Bazar; 4th petitioner is the Fair Price Shop Dealer of shop No.33 Chikinam Street; 5th petitioner is the Fair Price Shop Dealer of shop No.99 Baktavatsala nagar; 6th petitioner is the Fair Price Shop Dealer of shopno.30, Brundavan nagar; 7th petitioner is the Fair Price Shop Dealer of Brundavan Nagar of Nellore Town and 8th petitioner is the Fair Price Shop Dealer of shopno.88 Gayatri Nagar, Nellore town and that though they have been insisting for release of kerosene quota in respect of new irish cards (Biometric), still the authorities are distributing kerosene @ 35% and 65% i.e., only they are getting 35% quota of kerosene, whereas kerosene

hawkers are getting 65%. It is also stated that earlier as there is no clear instructions from the Government or Commissioner, the petitioners could not insist for full quota at that time and now in view of changed circumstances i.e., issue of Irish cards (not replaced cards) and also specific instructions issued by Commissioner in respect of Krishna District, the petitioners requested the respondents to implement the proceedings issued by Commissioner dt.27-3-2006. It is further stated that the District Administration has been postponing on the ground that instructions issud by the Commissioner dt.27-3-2006 are pertaining to only Krishna District, but they have failed to appreciate that the Commissioner is the Head of the State and he has issued said proceedings as per the direction issued by this Hon'ble High Court in W.P.No.20474/2004 dt.21-11-2005. It is also stated that in the said Writ Petition various issued were raised and this Hon'ble Court has given specific direction to the Commissioner to settle the issue by disposing of the Writ Petition and since the distribution of kerosene between dealers and kerosene hawkers is pertaining to said issue, the Commissioner has issued instructions to the authorities and the same was addressed to the Krishna District Collector and in fact the District Collector, Krishna has implemented the same in number of Mandals and that there is no justification in

rejecting the petitioners' request on the ground that there is a practice of ratio @ 65% : 35% which is not justifiable. It is further stated that in view of the policy decision taken even in the Government memodt.26-4-1994 and subsequent instruction issued by the Commissioner as mentioned above, the District Administration ought to have sought clarification at least from the Commissioner to avoid these confusions and that in view of the increase of cards and changed circumstances, the petitioners are entitled for kerosene quota in respect of new cards. It is also stated that curiously the District Administration has appointed or entrusted distribution in the event of death of kerosene hawkers in favour of another hawker which is not proper, as such the entrustment is without sanction of law. It is further stated that in some places one family i.e., wife and husband i.e., both have got licenses as kerosene hawkers effecting the rights of the dealers and as such it is just and necessary to rectify all these issues and to streamline the distribution of kerosene distribution in respect of Nellore town and that the ratio of 65% is without any sanction of law, as such absolutely there is no justification in this regard. It is further stated that the Writ Petition is being filed seeking direction to the respondent No.3 to implement the memo No.1584/CS II/94 (P&CS

Dept) dt.26-4-1994 issued by the 1st respondent and consequential proceedings dt.27-3-2006 issued by 2nd respondent in distribution of kerosene by the new ration cards. Further it is stated that in the memo No.1584, dt.26-4-1994 issued by the Government it was specifically mentioned that “no appointment of any new hawkers and policy of the Government is to distribute all the commodities under one roof” i.e., Fair Price Shop. It is also stated that though the authorities across the State are not appointing kerosene hawkers in view of the said policy, but in Nellore District kerosene is still being allotted to the hawkers in respect of new ration cards contrary to the above instructions. It is further stated that in respect of Krishna District the concerned as stated supra, Fair Price Shop Dealers Welfare Association had filed W.P.No.20474/2004 before this Hon'ble High Court and the said Writ Petition was disposed of on 21-11-2005 directing the 2nd respondent Commissioner to consider the representations made by the said association in the light of the observations made in earlier Writ Petition W.P.No.9203/95 and relevant orders/circulars issued by the Government from time to time. It is also stated that as per the said directions issued by this Court, the 2nd respondent has issued order dt.27-3-2006 after hearing

both the parties and examining all the issues and that directions were issued to all the District Collectors for attachment of all new cards to Fair Price Shops only, in view of earlier instructions dt.15-11-2003 and 23-10-2005 and that consequently, Krishna District Joint Collector had issued a circular dt.6-8-2006 stating “new cards issued under Irish Images should be attached to the Fair Price Shop Dealers for making monthly allotment of PDS kerosene.” Further it is stated that the above instructions clearly indicate that all the commodities including kerosene are to be distributed under one roof i.e., Fair Price Shop only. It is also stated that in order to avoid any inconvenience to the existing kerosene hawkers the above proceedings contemplate only new cards being attached to the Fair Price Shops for the purpose of distribution of PDS kerosene without distributing the old cards already allotted to the hawkers and as such there will not be any difficulty for the authorities to implement the said instructions. It is further stated that without depriving the rights of the kerosene hawkers in respect of their old cards, the authorities will have to implement the instructions of the Government to attach all the new cards to the Fair Price Shop Dealers only for the purpose of distribution of kerosene. It is also stated that as per the Government memo, the District Administration cannot

appoint any new hawker and all new cards will have to be attached to the Fair Price Shops only. It is also stated that once proceedings have been issued as per the directions issued by this Hon'ble Court, it is the duty of the District Administration to implement the said proceedings without any delay and that otherwise the object of the memo dt.26-4-1994 and consequential circular will be defeated. Further it is stated that strengthening of the public distribution system through fair price shops is the policy of the Government. It is also stated that while in respect of hawkers there are no prescribed regulations, regulating the distribution of kerosene, the Fair Price Shop Dealers have to distribute the kerosene and other commodities as per the authorization issued under the Control Order 2001. It is for the stated that despite specific instructions, not only is the 3rd respondent not implementing the above instructions and but also has made arrangements contrary to the instructions by allotting 65% of kerosene to the hawkers and 35% to the Fair Price Shop Dealers and also stated that this is contrary to the above-mentioned memo and circulars. The petitioner also further stated that inspite of their representations to the respondents, the 3rd respondent is implementing the proceedings issued by the 2nd respondent dt.27-3-2006 and that the impugned

inaction of the 3rd respondent in implementing the proceedings issued by the 2nd respondent is illegal, arbitrary and violative of principles of natural justice and as stated supra, they are entitled for kerosene quota in respect of new cards. It is further stated that earlier in W.P.No.9203/95 dt.18-3-1996 filed by kerosene hawkers, there was a direction stating that the Collector shall not allot quantity over and above 2800 lts., of kerosene to each hawker and as such that was the maximum limit prescribed for allotment of quota. It is also stated that no where the Hon'ble High Court directed the authorities to allot 2800 lts., of kerosene to them and also further stated that now the entire scenario has changed because of withdrawal of kerosene qota in respect of pink cards and also reduction of kerosene quota by Government and as such taking into account the present situation and the directions issued by this Hon'ble Court, the Commissioner has issued the proceedings dt.27-3-2006. In such circumstances, the petitioner approached this Court.

5. It is no doubt true that the Government had taken a policy decision that as far as the existing prior cards are concerned, which are with the kerosene dealer, the same not to be disturbed. But as far as the fresh cards are concerned, all are to be brought under the same roof and

to be allotted to the Fair Price Shop Dealers. It is also not in serious controversy that this aspect may have to be looked into by the competent authority – the District Collector of the concerned District. In the light of the same, let these petitioners make a representation to the District Collector, Nellore narrating all the facts and circumstances and let the District Collector look into the grievances and pass appropriate orders in the light of the circulars, Government Memos and the Control Orders governing the field within a period of six weeks from the date of receipt of this order.

6. The Writ Petition is disposed of accordingly. No order as to costs.

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Justice P.S.Narayana

25th October, 2007

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